

1 VERSO LAW GROUP LLP
2 GREGORY S. GILCHRIST (Cal. Bar No. 111536)
3 RYAN BRICKER (Cal. Bar No. 269100)
4 SOPHY TABANDEH (Cal Bar No. 287583)
5 PAYMANEH PARHAM (Cal. Bar No. 335604)
6 209 Kearny Street, Third Floor
7 San Francisco, California 94108
Telephone: (415) 534-0495
Facsimile: (270) 518-5974
Email: greg.gilchrist@versolaw.com
ryan.bricker@versolaw.com
sophy.tabandeh@versolaw.com
paymaneh.parhami@versolaw.com

8 Attorneys for Plaintiff
9 PATAGONIA, INC.

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION – LOS ANGELES**

13 PATAGONIA, INC.,

Case No. 2:23-cv-04168

14 Plaintiff,

**COMPLAINT FOR
COUNTERFEITING,
TRADEMARK INFRINGEMENT,
UNFAIR COMPETITION,
DILUTION, AND COPYRIGHT
INFRINGEMENT**

15 v.

16 NORDSTROM, INC.,

17 Defendant.

18 **JURY TRIAL DEMAND**

20 This lawsuit addresses Nordstrom, Inc.’s (“Nordstrom”) sale of thousands of
21 counterfeit Patagonia sweatshirts and t-shirts through its Nordstrom Rack stores.

22 Nordstrom holds itself out as a trusted retailer with a strong reputation among
23 its customers. For many years Nordstrom was an authorized dealer of Patagonia,
24 Inc.’s (“Patagonia”) apparel, in part because of that reputation. While Nordstrom is
25 no longer an authorized Patagonia dealer, Nordstrom’s customers expect to find
26 genuine Patagonia product at Nordstrom stores, including its Nordstrom Rack
27 stores, which Nordstrom advertises as carrying “the same vendors carried at
28 Nordstrom and [operates] . . . as an outlet for clearance merchandise from the

1 Nordstrom banner.” That is why Nordstrom’s sale of counterfeit Patagonia apparel
2 is so damaging to Nordstrom’s customers and to Patagonia’s brand and reputation
3 with those customers.

4 These obvious counterfeits – especially to Nordstrom who knows Patagonia’s
5 products well – also deliberately mislead customers about the quality of the
6 materials used and the conditions in which they were made. The counterfeit
7 sweatshirts include a neck label prominently advertising “organic cotton” but a care
8 and content label listing the fiber as “100% recycled polyester.” The hang tag on
9 the products also includes a Fair Trade Certified™ logo, and states “This product is
10 made in a fair trade Certified™ sewing facility . [sic] which means we pay a
11 premium to workers so they can elevate their standard of living.” Patagonia has
12 spent decades, and invested millions of dollars, to establish product quality and fair
13 labor practices as pillars of its brand. These counterfeit products prey on
14 Patagonia’s reputation, misleading customers into buying poor quality products that
15 were, on information and belief, made in factories with conditions that do not meet
16 Fair Trade Certified™ requirements.

17 Examples of Nordstrom’s counterfeit products follow:

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In an effort to avoid litigation, Patagonia brought this problem to Nordstrom's attention and requested that the company voluntarily recall the products or reimburse customers. Because Nordstrom has failed to recall these fake, mislabeled Patagonia-branded products (or even inform its customers that they purchased counterfeits of inferior fabrication and quality), Patagonia must file this lawsuit to prevent further harm to Patagonia and consumers. To prevent further damage to consumers, Patagonia, and its brand, Patagonia alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Patagonia, Inc. ("Patagonia") is a California corporation headquartered at 259 West Santa Clara Street, Ventura, California 93001. Patagonia has been designing, developing, marketing, and selling outdoor apparel, accessories, and active sportswear for nearly fifty years. Patagonia's PATAGONIA brand and P-6 logo are famous in the United States and around the world, and instantly recognized by consumers as a symbol of innovative apparel designs, quality products, and environmental and corporate responsibility.

1 2. Defendant Nordstrom, Inc. is a Colorado and Washington corporation
2 headquartered at 1600 7th Avenue, Suite 2500, Seattle, Washington, 98191.
3 Nordstrom operates Nordstrom and Nordstrom Rack retail stores throughout the
4 country, including in California, and online at www.nordstrom.com and
5 www.nordstromrack.com. In SEC filings, Nordstrom describes its Nordstrom Rack
6 business as follows: “Nordstrom Rack purchases merchandise primarily from the
7 same vendors carried at Nordstrom and also serves as an outlet for clearance
8 merchandise from the Nordstrom banner.” *See* Nordstrom’s 2022 Annual Report,
9 accessed at <https://press.nordstrom.com/static-files/789539ef-2c11-439f-9d71-efa4cf4e86f0>. Combining its sales through Nordstrom and Nordstrom Rack stores,
10 Nordstrom reported over \$15 billion in revenue in 2022. Nordstrom offers,
11 promotes, and sells products that infringe Patagonia’s intellectual property rights
12 through its retail stores.
13

14 3. Patagonia’s trademark and counterfeiting claims arise under the
15 Trademark Act of 1946 (the Lanham Act), as amended by the Trademark Dilution
16 Revision Act of 2006 (15 U.S.C. §§ 1051, *et seq.*). Patagonia’s claims for copyright
17 infringement arise from Defendant’s infringement of Patagonia’s exclusive rights
18 under the United States Copyright Act (17 U.S.C. §§ 101, *et seq.*). This Court has
19 jurisdiction over such claims pursuant to 28 U.S.C. §§ 1338(a) and 1338(b)
20 (trademark and unfair competition), 17 U.S.C. § 501 (copyright), 28 U.S.C. § 1331
21 (federal question), and 15 U.S.C. § 1121 (Lanham Act). This Court has jurisdiction
22 over the state law claims under 28 U.S.C. § 1367 (supplemental jurisdiction) and 28
23 U.S.C. § 1332 (diversity).

24 4. This Court has personal jurisdiction over Defendant because Defendant
25 has purposefully availed itself of the privilege of doing business in this district.
26 Through the sale of the counterfeit and infringing products identified in this lawsuit,
27 Defendant has directed its conduct into this district, including by selling and
28 promoting such products into the district through its retail stores in California, and

1 individually targeting Patagonia, a corporation they know has its principal place of
2 business in this district.

3 5. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and 1400(a)
4 because Defendant infringes Patagonia's intellectual property in this district,
5 transacts business in this district, and a substantial part of the events giving rise to
6 the claims asserted arose in this district.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

Patagonia's History

9 6. Patagonia was founded in the late 1960s to design and sell climbing
10 clothes and other active sportswear. The company adopted the brand
11 “PATAGONIA” to differentiate a related business that designed and manufactured
12 climbing gear and tools. PATAGONIA was chosen as the trademark to call to mind
13 romantic visions of glaciers tumbling into fjords, jagged windswept peaks, gauchos,
14 and condors. Since at least 1973, the PATAGONIA brand has appeared on a multi-
15 colored label inspired by a silhouette of the jagged peaks of the Mt. Fitz Roy skyline
16 (the “P-6 logo”).

17 7. In the fifty years since Patagonia's business started, the PATAGONIA
18 brand and its P-6 logo have become among the most identifiable brands in the
19 world. Patagonia's products now include a wide range of apparel products and
20 equipment, including t-shirts, hoodies, sweatshirts, and fleece, as well as technical
21 products designed for climbing, skiing and snowboarding, surfing, fly fishing, and
22 trail running, which are sold around the world.

23 8. Over the years, Patagonia has been recognized and honored for its
24 business initiatives, including receiving the Sustainable Business Counsel's first
25 "Lifetime Achievement Award." In 1996, with an increased awareness of the
26 dangers of pesticide use and synthetic fertilizers used in conventional cotton
27 growing, Patagonia began the exclusive use of organically grown cotton and has
28 continued that use for more than twenty years. In 2017, Patagonia helped establish

1 the Regenerative Organic Certified® program, a holistic agriculture certification
2 encompassing pasture-based animal welfare, fairness for farmers and workers, and
3 robust requirements for soil health and land management. In Spring 2020,
4 Patagonia launched its first cotton clothing grown on farms working toward
5 certification, and in Spring 2022, released its first Regenerative Organic Certified®
6 products, signifying that those cotton suppliers met the ROA's high standards for
7 soil health, social fairness and animal welfare. It was a founding member of the Fair
8 Labor Association®, which is an independent multi-stakeholder verification and
9 training organization that audits apparel factories. Additionally, since 1985
10 Patagonia has pledged 1% of sales to environmental groups to preserve and restore
11 our natural environment, donating more than \$100 million to date. In 2002,
12 Patagonia's founder, Yvon Chouinard, along with others, created a non-profit called
13 1% For the Planet® to encourage other businesses to do the same. Today, more than
14 1,200 member companies have donated more than \$150 million to more than 3,300
15 nonprofits through 1% For the Planet. In 2012, Patagonia became one of
16 California's first registered Benefit Corporations, ensuring Patagonia could codify
17 into its corporate charter consideration of its workers, community, and the
18 environment. In 2016, Patagonia pledged to donate all revenue from sales on Black
19 Friday, donating \$10 million to environmental grantees in response to customers'
20 purchases on that day. In 2018, Patagonia pledged an additional \$10 million in
21 grants to environmental groups in response to recent tax cuts given to businesses.
22 Over the course of two weeks in December 2019, Patagonia matched another \$10
23 million in donations to environmental and other grassroots organizations.
24 Patagonia's owners recently donated their holdings in the company to support
25 initiatives and innovations addressing climate change.

26 **Patagonia's Trademarks**

27 9. Patagonia owns numerous registrations for its distinctive P-6 logo and
28 PATAGONIA trademark, covering a wide-ranging assortment of products. Among

1 these are the following U.S. trademark registrations:

2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	Date of First Use
Trademark	Reg. No. / Reg. Date	Goods																									
PATAGONIA	1189402 / Feb. 9, 1982	Men's and Women's Clothing-Namely, Sweaters, Rugby Shirts, Walking Shorts, Trousers, Jackets, Mittens, Hoods and Rainwear	08/1974																								
	1294523 / Sept. 11, 1984	Men's, Women's and Children's Clothing-Namely, Jackets, Pants, Vests, Gloves, Pullovers, Cardigans, Socks, Sweaters, Underwear, Shirts, Shorts, Skirts and Belts	08/1974-1981																								
	1547469 / July 11, 1989	Men's, Women's and Children's Clothing- Namely, Jackets, Pants, Shirts, Sweaters, Vests, Skirts, Underwear Tops and Bottoms, Socks, Gloves, Mittens, Hats, Face Masks, Balaclava, Gaiters, Suspenders, and Belts	08/1974-1981																								
PATAGONIA	2260188 / July 13, 1999	Computerized on-line ordering activities in the field of clothing and accessories; Providing information in the field of technical clothing and accessories for use in recreational, sporting and leisure activities; providing information in the field of existing and evolving environmental issues	10/1995																								
PATAGONIA.COM	2392685 / Oct. 10, 2000	On-line retail store and mail order services featuring technical clothing, footwear, and accessories; Computer services in the nature of on-line information related to the environment and clothing	10/1995																								
PATAGONIA	2662619 / Dec. 17, 2002	Retail store services featuring clothing, footwear, luggage and a wide variety of sporting goods and accessories	06/1986																								

Trademark	Reg. No. / Reg. Date	Goods	Date of First Use
PATAGONIA	5561006 / Sept. 11, 2018	Stickers; paper banners; fiction and non-fiction books on a variety of topics; posters; non-magnetically encoded gift cards; photographs	12/1991

These registrations for Patagonia's trademarks and logos are in full force and effect. The registrations (with the exception of Reg. No. 5561006) have become incontestable under 15 U.S.C. § 1065. A color image of the P-6 logo follows:



Patagonia also owns registered and common law rights for its well-known WORN WEAR mark and below design mark (collectively, the "WORN WEAR Marks") for retail services, along with individual apparel products (and other related goods) and its repair and trade-in programs. *See* <https://wornwear.patagonia.com/>. Among these are the following U.S. trademark registrations and applications:

Trademark	Reg./App. No. / Reg./App. Date	Classes/Goods	Date of First Use
WORN WEAR	Reg. No. 4955520 / May 10, 2016	035 Retail store services featuring vintage and used clothing, footwear, luggage, and outdoor gear and accessories	Oct. 07, 2012

Trademark	Reg./App. No. / Reg./App. Date	Classes/Goods	Date of First Use
	Reg. No. 4623527 / Oct. 21, 2014	035 Retail store services featuring vintage and used clothing, footwear, luggage, and outdoor gear and accessories	Oct. 07, 2012
WORN WEAR	App. No. 97380428 / Apr. 25, 2022	018 Backpacks; All-purpose carrying bags; Duffle bags; Messenger bags; Travel bags 025 Clothing, namely, tops, bottoms, shirts, jackets, coats, parkas, vests, pullovers, sweaters, sweatshirts, hooded sweatshirts, dresses, skirts, pants, jeans, shorts, board shorts	Sep. 01, 2017 / Oct. 07, 2012
	App. No. 97387380 / Apr. 28, 2022	018 Backpacks; All-purpose carrying bags; Duffle bags; Messenger bags; Travel bags 025 Clothing, namely, tops, bottoms, shirts, jackets, coats, parkas, vests, pullovers, sweaters, sweatshirts, hooded sweatshirts, dresses, skirts, pants, jeans, shorts, board shorts	Sep. 01, 2017 / Oct. 07, 2012

The registrations for the WORN WEAR Marks are in full force and effect.

The registrations have become incontestable under 15 U.S.C. § 1065.

Collectively, these marks, Patagonia's other registered trademarks, and its common law marks are referred to as the "PATAGONIA trademarks." Patagonia also owns registered copyrights for the P-6 logo (Registration No. VA 1-801-788).

10. The PATAGONIA trademarks are distinctive, arbitrary and fanciful, entitled to the broadest scope of protection, and certain of the PATAGONIA

1 trademarks are registered worldwide.

2 11. For many years prior to the events giving rise to this Complaint and
3 continuing to the present, Patagonia annually has spent enormous amounts of time,
4 money, and effort advertising and promoting the products on which its PATAGONIA
5 trademarks are used. PATAGONIA brand products are advertised in a variety of
6 contexts and media, including in print and on the Internet. In addition to advertising
7 by Patagonia, the PATAGONIA trademarks are also advertised and promoted and
8 presented at point of sale by numerous authorized retailers. Consumers, accordingly,
9 are exposed to the PATAGONIA trademarks in a wide range of shopping and post-
10 sale contexts.

11 12. Patagonia has sold its PATAGONIA brand products all over the world,
12 including throughout the United States and California. Through its promotion and
13 investment in its brand and extensive sales, publicity, awards, and leadership trying
14 to minimize the environmental impact of its business, Patagonia has acquired
15 enormous goodwill in its PATAGONIA trademarks. The PATAGONIA trademarks
16 are famous within the meaning of the Trademark Dilution Revision Act, enjoy
17 strong consumer recognition, and are recognized around the world and throughout
18 the United States by consumers as signifying high-quality products made by a
19 responsible company.

20 **Defendant's Infringement of Patagonia's Rights**

21 13. In blatant disregard of Patagonia's rights in the PATAGONIA
22 trademarks – and without authorization from Patagonia – Defendant has promoted,
23 offered for sale, and sold apparel bearing designs and logos that are identical to
24 Patagonia's P-6 logo and PATAGONIA word mark, and using tags and labels that
25 reproduce Patagonia's WORN WEAR mark, which inevitably will imply to
26 consumers that Patagonia has endorsed or authorized these products. These designs
27 and logos, and the products bearing them, are referred to as Defendant's
28 "Counterfeit Designs."

1 14. On information and belief, Defendant began selling counterfeit
2 Patagonia products at Nordstrom Rack stores shortly after the end of the years-long
3 dealer relationship between Patagonia and Nordstrom. Through that dealer
4 relationship, Nordstrom sold genuine Patagonia products in all Nordstrom stores and
5 e-commerce channels, and collaborated with Patagonia on projects like the
6 “Concept 004” in-store retail environment, which presented Patagonia’s Worn
7 Wear®-branded repaired or recycled apparel and other Patagonia products to
8 Nordstrom shoppers in Los Angeles, New York, Seattle, and Vancouver. An
9 example of Nordstrom’s presentation of the Patagonia brand during the parties’
10 dealer relationship follows.

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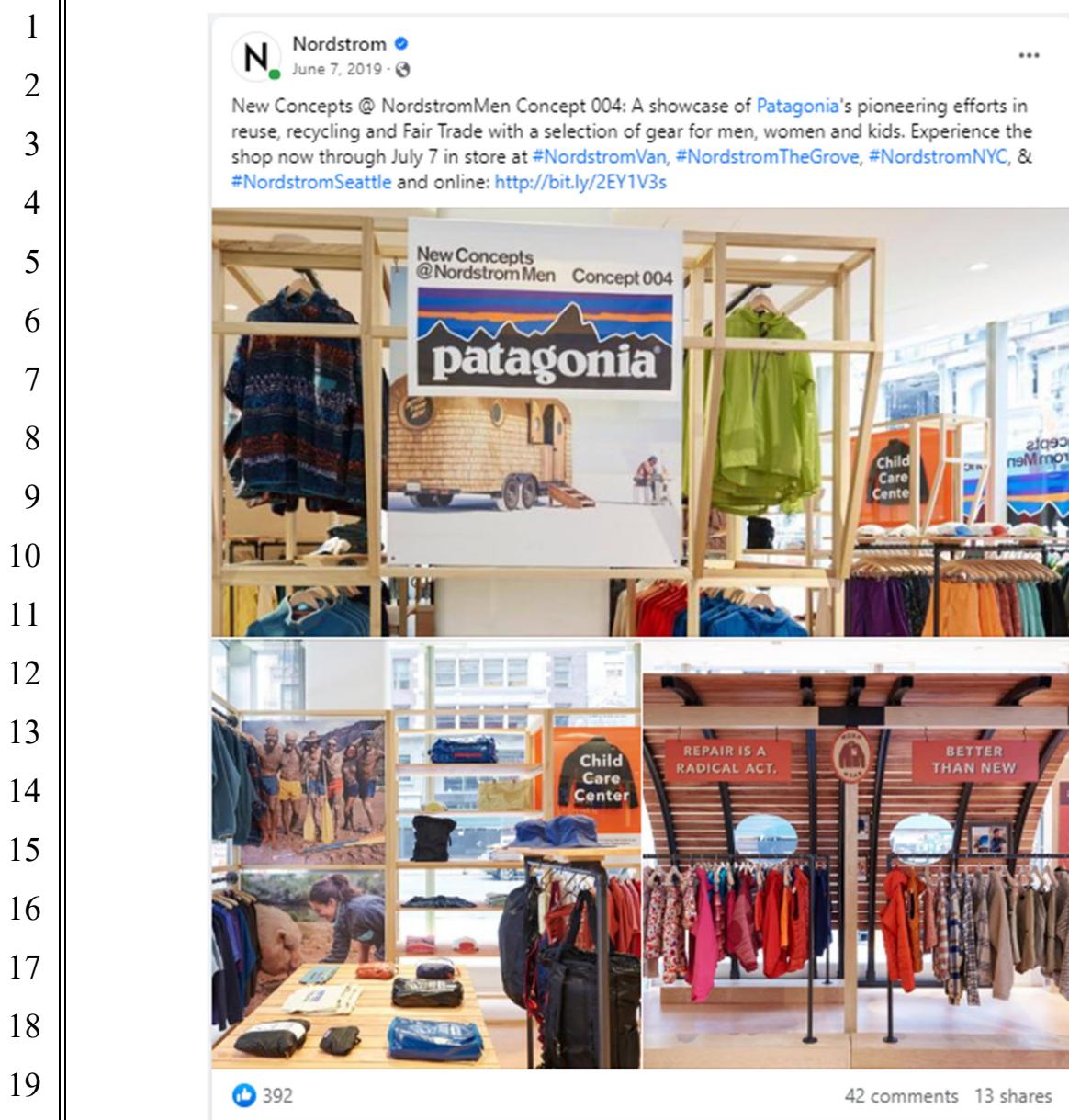
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15. Patagonia recently elected not to renew the dealer agreement with
 Nordstrom, and Nordstrom proceeded to sell through its on-hand inventory of
 Patagonia products. In 2023, Patagonia discovered products bearing the Counterfeit
 Designs in Nordstrom Rack stores.

16. The Counterfeit Designs are identical to the P-6 logo artwork and
 trademark, and identical to the PATAGONIA word mark. Defendant's products
 bearing the Counterfeit Designs are identical to and compete directly with goods
 sold by Patagonia, including sweatshirts and t-shirts.

1 17. Defendant's use of the Counterfeit Designs has caused or will cause a
2 likelihood of confusion among consumers regarding the source of Defendant's
3 products, and whether Patagonia has sponsored, licensed, authorized, or is somehow
4 affiliated with Defendant.

5 18. Defendant began using the Counterfeit Designs long after the
6 PATAGONIA trademarks became famous. The Counterfeit Designs have caused or
7 are likely to cause dilution of Patagonia's famous and distinctive marks by
8 diminishing their distinctiveness and singular association with Patagonia. Patagonia
9 has no alternative but to protect its goodwill and famous trademark by obtaining an
10 injunction against Defendant's further use of the counterfeit trademark and designs.

11 19. Patagonia is informed and believes that Defendant has marketed and
12 sold substantial quantities of products bearing the Counterfeit Designs through
13 Nordstrom Rack stores across the country, and has profited (and continues to derive
14 commercial benefit) from such sales. Defendant's conduct has been willful.

15 20. Based on a review of the labeling affixed to products bearing the
16 Counterfeit Designs, Defendant's products bearing the Counterfeit Designs are
17 made out of polyester but are falsely labeled as organic cotton, which poses a
18 substantial risk of danger to the public.

19 21. Defendant's actions have caused and will cause Patagonia irreparable
20 harm for which money damages and other remedies are inadequate. Unless
21 Defendant is restrained by this Court, Defendant will continue expanding its illegal
22 activities and otherwise continue to cause irreparable damage and injury to
23 Patagonia by, among other things:

24 a. Depriving Patagonia of its statutory rights to use and control
25 use of its trademark;

26 b. Creating a likelihood of confusion, mistake, and deception
27 among consumers and the trade as to the source of the counterfeit products;

28 c. Causing the public falsely to associate Patagonia with

1 Defendant and/or its products;

2 d. Causing the public falsely to believe Patagonia has collaborated
3 with Defendant, entered a co-branding relationship with Defendant, or is otherwise
4 associated with Defendant and/or its products;

5 e. Causing the public falsely to believe Patagonia has mislabeled its
6 apparel products, holding them out as Organic Cotton – a fabric that Patagonia
7 committed to using for all of its cotton apparel in 1996 – while actually using low
8 quality polyester;

9 f. Causing incalculable and irreparable damage to Patagonia's
10 goodwill and diluting the capacity of its famous PATAGONIA trademarks to
11 differentiate its products from those of its competitors;

12 g. Causing incalculable and irreparable damage to Patagonia's
13 licensing and collaboration programs, and to Patagonia's ability to control its
14 brand partnerships and to associate itself with entities who are specifically
15 aligned to Patagonia's company mission; and

16 h. Causing Patagonia to lose sales of its genuine PATAGONIA
17 products.

18 22. Accordingly, in addition to other relief, Patagonia is entitled to
19 injunctive relief against Defendant, including an injunction requiring Defendant to
20 recall all products bearing the Counterfeit Designs.

21 **FIRST CLAIM**

22 **FEDERAL TRADEMARK INFRINGEMENT**

23 **(15 U.S.C. §§ 1114-1117)**

24 23. Patagonia realleges and incorporates by reference each of the
25 allegations contained in paragraphs 1 through 22 of this Complaint.

26 24. Defendant has used, in connection with the sale, offering for sale,
27 distribution, or advertising of its products bearing the Counterfeit Designs, words
28 and symbols that infringe upon Patagonia's PATAGONIA trademarks.

1 25. These acts of trademark infringement have been committed with the
2 intent to cause confusion, mistake, or deception, and are in violation of 15 U.S.C.
3 § 1114. The fact that Defendant was previously an authorized dealer – and therefore
4 familiar with Patagonia’s trademarks, products, and labeling – underscores the
5 willfulness with which Defendant decided to source and sell the counterfeit products
6 at issue in this lawsuit.

7 26. As a direct and proximate result of Defendant's conduct, Patagonia is
8 entitled to recover up to treble the amount of Defendant's unlawful profits and
9 Patagonia's damages and an award of attorneys' fees under 15 U.S.C. § 1117(a).

10 27. Patagonia is entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a)
11 that requires Defendant to stop use of the Counterfeit Designs, and any other mark
12 or design similar to the PATAGONIA trademarks.

SECOND CLAIM

FEDERAL UNFAIR COMPETITION

(False Designation of Origin and False Description – 15 U.S.C. § 1125(a))

16 28. Patagonia realleges and incorporates by reference each of the
17 allegations contained in paragraphs 1 through 27 of this Complaint.

18 29. Defendant's conduct as alleged in this Complaint constitutes the use of
19 symbols or devices tending falsely to describe the counterfeit products, within the
20 meaning of 15 U.S.C. § 1125(a)(1). Defendant's conduct is likely to cause
21 confusion, mistake, or deception by or in the public as to the affiliation, connection,
22 association, origin, sponsorship, or approval of the counterfeit products to the
23 detriment of Patagonia and in violation of 15 U.S.C. § 1125(a)(1).

24 30. As a direct and proximate result of Defendant's conduct, Patagonia is
25 entitled to recover up to treble the amount of Defendant's unlawful profits and
26 Patagonia's damages, and an award of attorneys' fees under 15 U.S.C. § 1117(a).

27 31. Patagonia is entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a)
28 that requires Defendant to stop use of the Counterfeit Designs, and any other mark

1 or design similar to the PATAGONIA trademarks.

2 **THIRD CLAIM**

3 **FEDERAL COUNTERFEITING**

4 **(15 U.S.C. §§ 1114-1117)**

5 32. Patagonia realleges and incorporates by reference each of the
6 allegations contained in paragraphs 1 through 31 of this Complaint.

7 33. Defendant has used, in connection with the sale, offering for sale,
8 distribution, or advertising of products, counterfeit imitations of Patagonia's
9 PATAGONIA trademarks.

10 34. These acts of counterfeiting have been committed with the intent to
11 cause confusion, mistake, or deception, and are in violation of 15 U.S.C. § 1114.
12 The fact that Defendant was previously an authorized dealer – and therefore familiar
13 with Patagonia's trademarks, products, and labeling – underscores the willfulness
14 with which Defendant decided to source and sell the counterfeit products at issue in
15 this lawsuit.

16 35. As a direct and proximate result of Defendant's conduct, Patagonia is
17 entitled to recover treble the amount of Defendant's unlawful profits and
18 Patagonia's damages and an award of attorneys' fees under 15 U.S.C. § 1117(a).

19 36. As a direct and proximate result of Defendant's conduct, Patagonia is
20 entitled to recover statutory damages based on such defendants' willful
21 counterfeiting, pursuant to 15 U.S.C. § 1117(c).

22 37. Patagonia is entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a)
23 that requires Defendant to stop use of the Counterfeit Designs, and any other mark
24 or design similar to the PATAGONIA trademarks.

25 **FOURTH CLAIM**

26 **FEDERAL DILUTION OF FAMOUS MARK**

27 **(Trademark Dilution Revision Act of 2006, 15 U.S.C. § 1125(c))**

28 38. Patagonia realleges and incorporates by reference each of the

1 allegations contained in paragraphs 1 through 37 of this Complaint.

2 39. Patagonia's PATAGONIA trademarks (including the P-6 logo) are
 3 distinctive and famous within the meaning of the Trademark Dilution Revision Act
 4 of 2006, 15 U.S.C. § 1125(c), and were famous prior to Defendant's adoption of the
 5 Counterfeit Designs.

6 40. Defendant's conduct is likely to cause dilution of Patagonia's
 7 PATAGONIA trademark by diminishing its distinctiveness in violation of the
 8 Trademark Dilution Revision Act of 2006, 15 U.S.C. § 1125(c).

9 41. As a direct and proximate result of Defendant's conduct, Patagonia is
 10 entitled to recover up to treble the amount of Defendant's unlawful profits and
 11 Patagonia's damages, and an award of attorney's fees under 15 U.S.C. §§ 1116(a),
 12 1117(a), and 1125(c).

13 42. Patagonia is entitled to injunctive relief pursuant to 15 U.S.C.
 14 §§ 1116(a) and 1125(c) that requires Defendant to stop use of the Counterfeit
 15 Designs, and any other mark or design similar to the PATAGONIA trademarks.

16 **FIFTH CLAIM**

17 **FEDERAL COPYRIGHT INFRINGEMENT**

18 **(17 U.S.C. §§ 101, *et seq.*, and 17 U.S.C. §§ 501, *et seq.*)**

19 43. Patagonia realleges and incorporates by reference each of the
 20 allegations contained in paragraphs 1 through 42 of this Complaint.

21 44. Patagonia owns the copyright in its P-6 logo, which is federally
 22 registered and was registered prior to Defendant's copying.

23 45. Defendant has copied, advertised, offered for sale, and/or sold
 24 substantially similar copies of the P-6 logo without Patagonia's authorization or
 25 permission and in violation of Patagonia's exclusive rights in its copyright.

26 46. Defendant's unlawful reproduction, advertisement, distribution, and/or
 27 sale of Patagonia's proprietary design constitutes copyright infringement. Patagonia
 28 alleges that Defendant acted intentionally and in bad faith when it reproduced

1 Patagonia's copyrighted work (in identical or substantially similar form), and
2 advertised, distributed, displayed, and/or sold products bearing the Counterfeit
3 Designs.

4 47. Defendant's infringement alleged herein has caused and, if not
5 enjoined, will continue to cause Patagonia to suffer irreparable harm for which there
6 is no adequate remedy at law, and has also caused damage to Patagonia in an
7 amount which cannot be accurately computed at this time but will be proven at trial.

8 48. As a direct and proximate result of Defendant's conduct, Patagonia is
9 entitled to injunctive relief, as well as actual damages and any profits earned by
10 Defendant as a result of its infringements, or statutory damages of up to \$150,000
11 for each work infringed, at Patagonia's election, pursuant to 17 U.S.C. § 504.

12 **SIXTH CLAIM**

13 **TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION**

14 **UNDER CALIFORNIA STATUTORY LAW**

15 (Cal. Bus. & Prof. Code §§ 14200 *et seq.*;

16 **Cal. Bus. & Prof. Code § 17200 *et seq.***)

17 49. Patagonia realleges and incorporates by reference each of the
18 allegations contained in paragraphs 1 through 48 of this Complaint.

19 50. Patagonia is the owner of numerous registrations for the PATAGONIA
20 trademarks, as well as common law rights in those marks.

21 51. Defendant is using a design that infringes upon Patagonia's
22 PATAGONIA trademarks without the consent of Patagonia and in connection with
23 the sale, offering for sale, distribution, or advertising of its products bearing the
24 Counterfeit Designs.

25 52. Defendant's infringement of Patagonia's PATAGONIA trademarks is
26 likely to cause confusion, mistake, and deception as to the source of the origin of
27 Defendant's offerings.

28 53. Defendant uses the Counterfeit Designs to enhance the commercial

1 value of Defendant's offerings.

2 54. Defendant's acts violate Patagonia's trademark rights under California
 3 Business & Professions Code §§14245 *et seq.*

4 55. Defendant's conduct as alleged in this Complaint also constitutes
 5 "unlawful, unfair or fraudulent business act[s] or practice[s] and unfair, deceptive,
 6 untrue or misleading advertising" within the meaning of California Business &
 7 Professions Code §§ 17200 *et seq.*

8 56. Patagonia is entitled to monetary damages and injunctive relief
 9 prohibiting Defendant from using the Counterfeit Designs, or any other mark or
 10 design that is likely to be confused with the PATAGONIA trademarks.

11 57. Without injunctive relief, Patagonia has no means by which to control
 12 the continuing injury to its reputation and goodwill or that of its PATAGONIA
 13 trademarks. Patagonia has been and will continue to be irreparably harmed. No
 14 amount of money damages can adequately compensate Patagonia if it loses the
 15 ability to control its marks.

16 58. Because Defendant's actions have been committed willfully,
 17 maliciously, and intentionally, Patagonia is entitled to treble the amount of
 18 Defendants' unlawful profits and Patagonia's damages under California Business &
 19 Professions Code § 14250.

20 59. Because Defendants' conduct has been undertaken willfully,
 21 intentionally and in reckless disregard of the possible injurious consequences,
 22 Patagonia is entitled to exemplary or punitive damages under Cal. Civ. Code § 3294.

23 **SEVENTH CLAIM**

24 **TRADEMARK DILUTION UNDER CALIFORNIA LAW**

25 **(Cal. Bus. & Prof. Code § 14247)**

26 60. Patagonia realleges and incorporates by reference each of the
 27 allegations contained in paragraphs 1 through 59 of this Complaint.

28 61. Patagonia owns valid and protectable rights in its PATAGONIA

1 trademarks (including the P-6 logo).

2 62. The PATAGONIA trademarks – registered marks in the state of
 3 California – are distinctive and famous within the meaning of the California Model
 4 State Trademark Law, Cal. Bus. & Prof. Code § 14247, in that it is a household
 5 brand in California, and were famous prior to Defendant's adoption of the
 6 Counterfeit Designs.

7 63. Defendant's acts are likely to dilute the distinctive quality of the
 8 PATAGONIA trademarks. Defendant's acts therefore constitute trademark dilution
 9 under California Business & Professions Code § 14247, the analogous statutes of
 10 other states, and under California common law.

11 64. Patagonia is entitled to monetary damages and injunctive relief
 12 prohibiting Defendant from using the Counterfeit Designs, and any other mark
 13 or design similar to the PATAGONIA trademarks. Without injunctive relief,
 14 Patagonia has no means by which to control the continuing dilution of the
 15 PATAGONIA trademarks. Patagonia has been and will continue to be irreparably
 16 harmed. No amount of money damages can adequately compensate Patagonia for
 17 such harm.

18 65. Because Defendant's actions have been committed willfully,
 19 maliciously, and intentionally, Patagonia is entitled to treble the amount of
 20 Defendant's unlawful profits and Patagonia's damages under California Business &
 21 Professions Code § 14250.

22 66. Because Defendant's conduct has been undertaken willfully,
 23 intentionally and in reckless disregard of the possible injurious consequences,
 24 Patagonia is entitled to exemplary or punitive damages under Cal. Civ. Code § 3294.

25 **EIGHTH CLAIM**

26 **TRADEMARK INFRINGEMENT UNDER CALIFORNIA COMMON LAW**

27 67. Patagonia realleges and incorporates by reference each of the
 28 allegations contained in paragraphs 1 through 66 of this Complaint.

1 68. Patagonia owns valid and protectable rights in its PATAGONIA
2 trademarks at common law.

3 69. Defendant's conduct is likely to cause confusion, to cause mistake, or
4 to deceive as to the source of goods offered by Defendant, or as to affiliation,
5 connection, association, sponsorship, or approval of such goods and services, and
6 constitutes infringement of Patagonia's PATAGONIA trademarks at common law.

7 70. Defendant infringed Patagonia's PATAGONIA trademarks with
8 knowledge and intent to cause confusion, mistake, or deception.

9 71. Defendant's conduct is aggravated by that kind of willfulness, wanton-
10 ness, malice, and conscious indifference to the rights and welfare of Patagonia for
11 which California law allows the imposition of exemplary damages.

12 72. As a direct and proximate result of Defendant's activities, Patagonia
13 has suffered substantial damage.

14 73. Unless restrained and enjoined, the conduct of Defendant will further
15 impair the value of the PATAGONIA trademarks and Patagonia's business
16 reputation and goodwill. Patagonia has no adequate remedy at law.

17 74. Patagonia is entitled to monetary damages and injunctive relief
18 prohibiting Defendant from using the Counterfeit Designs, and any other mark or
19 design similar to the PATAGONIA trademarks.

20 75. Without injunctive relief, Patagonia has no means by which to control
21 the continuing injury to its reputation and goodwill or that of its PATAGONIA
22 trademarks. Patagonia has been and will continue to be irreparably harmed. No
23 amount of money damages can adequately compensate Patagonia if it loses the
24 ability to control its marks.

25 76. Because Defendant's actions have been committed willfully,
26 maliciously, and intentionally, Patagonia is entitled to recover reasonable attorneys'
27 fees and compensatory and punitive damages (see Cal. Civ. Code § 3294).

28 / / /

PRAYER FOR JUDGMENT

WHEREFORE, Patagonia prays that this Court grant it the following relief:

1. Adjudge that Defendant has infringed the PATAGONIA trademarks in violation of Patagonia's rights under 15 U.S.C. § 1114;

2. Adjudge that Defendant has infringed the PATAGONIA trademarks in violation of California statutory law;

3. Adjudge that Defendant has used counterfeit reproductions of Patagonia's registered trademarks in violation of Federal and California law;

4. Adjudge that Defendant has infringed Patagonia's common law rights in the PATAGONIA trademarks;

5. Adjudge that Defendant has competed unfairly with Patagonia in violation of Patagonia's rights under 15 U.S.C. § 1125(a);

6. Adjudge that Defendant has competed unfairly with Patagonia in violation of California statutory law;

7. Adjudge that Defendant's activities are likely to dilute Patagonia's famous PATAGONIA trademarks in violation of Patagonia's rights under 15 U.S.C. § 1125(c) and/or California law;

8. Adjudge that Defendants have infringed Patagonia's copyright rights in its P-6 logo;

9. Adjudge that Defendant and its agents, employees, attorneys, successors, assigns, affiliates, and joint venturers, and any person(s) in active concert or participation with it, and/or any person(s) acting for, with, by, through it, be enjoined and restrained at first during the pendency of this action thereafter permanently from:

a. Manufacturing, producing, sourcing, importing, selling, offering for sale, distributing, advertising, or promoting any goods or services that display any words or symbols that so resemble the PATAGONIA trademarks as to be likely to cause confusion, mistake, or deception, on or in connection with any product that

1 is not authorized by or for Patagonia, including, without limitation, any product or
2 service that bears the Counterfeit Designs, or any other approximation of
3 Patagonia's trademarks;

4 b. Using any word, term, name, symbol, device, or combination
5 that causes or is likely to cause confusion, mistake, or deception as to the affiliation
6 or association of Defendant or its products with Patagonia, or as to the origin of
7 Defendant's goods, or any false designation of origin, false or misleading
8 description or representation of fact, or any false or misleading advertising, or likely
9 dilution of the PATAGONIA trademark;

10 c. Further infringing the rights of Patagonia in and to its
11 PATAGONIA trademarks, or otherwise damaging Patagonia's goodwill or business
12 reputation;

13 d. Further diluting the famous PATAGONIA trademarks;
14 e. Otherwise competing unfairly with Patagonia in any manner;
15 f. Further infringing Patagonia's copyright rights in its P-6 logo
16 design, including by reproducing, distributing, or displaying such logo or any other
17 logo or design that is substantially similar to the P-6 logo; and

18 g. Continuing to perform in any manner whatsoever any of the
19 other acts complained of in this Complaint;

20 10. Adjudge that Defendant is prohibited from applying to register any
21 trademark or service mark which is likely to be confused with, or that dilutes the
22 distinctive quality of, Patagonia's PATAGONIA trademarks;

23 11. Adjudge that Defendant be required immediately to deliver to
24 Patagonia's counsel its entire inventory of counterfeit and infringing products,
25 including without limitation, patches and any other products, packaging, labeling,
26 advertising and promotional material, and all plates, patterns, molds, matrices, files,
27 data, and other material for producing or printing such items, that are in their
28 possession or subject to their control and that infringe Patagonia's trademarks as

1 alleged in this Complaint;

2 12. Adjudge that Defendant be required immediately, in light of the risks to
3 the public posed by Defendant's sale of falsely-labeled products, take all steps
4 necessary to effectively recall any products it has distributed bearing or associated
5 with the Counterfeit Designs and not manufactured under Patagonia's authority;

6 13. Adjudge that Defendant, within thirty (30) days after service of the
7 Court's judgment, be required to file with this Court and serve upon Patagonia's
8 counsel a written report under oath setting forth in detail the manner in which it has
9 complied with the judgment;

10 14. Adjudge that Patagonia recover from Defendant its damages and lost
11 profits, and Defendant's profits in an amount to be proven at trial;

12 15. Adjudge that Defendant be required to account for any profits that are
13 attributable to their illegal acts, and that Patagonia be awarded (1) Defendant's
14 profits and (2) all damages sustained by Patagonia, under 15 U.S.C. § 1117, plus
15 prejudgment interest;

16 16. Adjudge that the amounts awarded to Patagonia pursuant to 15 U.S.C.
17 § 1117 shall be trebled;

18 17. Adjudge that Patagonia recover damages based on Defendant's
19 counterfeit use of Patagonia's registered trademarks, including statutory damages at
20 Patagonia's election;

21 18. Adjudge that Patagonia recover from Defendant its damages based on
22 Defendant's copyright infringement, or statutory damages at Patagonia's election;

23 19. Adjudge that Patagonia recover punitive or exemplary damages from
24 Defendant based on Defendant's conduct done willfully, intentionally and in
25 reckless disregard of its possible injurious consequences.

26 20. Order an accounting of and impose a constructive trust on all of
27 Defendant's funds and assets that arise out of its infringing, dilutive activities;

28 21. Adjudge that Patagonia be awarded its costs and disbursements

1 incurred in connection with this action, including Patagonia's reasonable attorneys'
2 fees and investigative expenses; and

3 22. Adjudge that all such other relief be awarded to Patagonia as this Court
4 deems just and proper.

5
6 DATED: May 30, 2023

Respectfully submitted,

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9 VERSO LAW GROUP LLP

10 By: /s/ Gregory S. Gilchrist
11 GREGORY S. GILCHRIST
RYAN BRICKER
SOPHY TABANDEH
PAYMANEH PARHAMI

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13 Attorneys for Plaintiff
PATAGONIA, INC.

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1 **DEMAND FOR JURY TRIAL**
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4 Patagonia, Inc. demands that this action be tried to a jury.
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6

7 DATED: May 30, 2023 Respectfully submitted,
8
9

10 VERSO LAW GROUP LLP
11
12

13 By: /s/ Gregory S. Gilchrist
14 GREGORY S. GILCHRIST
15 RYAN BRICKER
16 SOPHY TABANDEH
17 PAYMANEH PARHAM
18
19

20 Attorneys for Plaintiff
21 PATAGONIA, INC.
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